

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
CASE NO. 1:10-cv-00564-MRB

LEXMARK INTERNATIONAL, INC.
Plaintiff

v.

INK TECHNOLOGIES PRINTER SUPPLIES, LLC
et al
Defendants

**STIPULATED PERMANENT INJUNCTION, CONSENT JUDGMENT, AND
DISMISSAL WITH PREJUDICE**

This matter is before the Court on the stipulated motion of Plaintiff, Lexmark International, Inc. (individually and collectively “Lexmark” as defined in the parties’ agreement) and John Doe Defendant OutOfToner.com, having a place of business at 1835 W. Crest Lane, Phoenix, AZ 85027 (individually and collectively “OutOfToner.com” as defined in the parties’ agreement), for entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal With Prejudice, having agreed to a compromise and settlement of this action.

**IT IS HEREBY FOUND, ORDERED, ADJUDGED WITH CONSENT OF
THE PARTIES** that:

1. Lexmark is in the business of developing, manufacturing and selling laser printers and toner cartridges—including corresponding versions thereof made by Lexmark under private label for Dell, IBM, Toshiba, Nashuatec, Unisys, and Source Technologies, including toner cartridges for Lexmark’s T420; T520/522; T610/612/614/616; T620/622; T630/632/634; T640/642/644; E120; E220;

E230/232/234/238/240; E320/322; E321/323; E330/332; E340/342; and E250/350/352/450 laser printers as well as the private-label versions thereof (collectively, “the Toner Cartridges”).

2. Lexmark owns and has standing to sue for infringement of United States Patent Nos. 5,337,032; 5,634,169; 5,758,231; 5,758,233; 5,768,661; 5,802,432; 5,875,378; 5,995,772; 6,009,291; 6,078,771; 6,397,015; 6,459,876; 6,487,383; 6,496,662; 6,678,489; 6,816,692; 6,871,031; 6,879,792; 7,139,510; 7,233,760; and 7,305,204 (the “Lexmark Patents”).

3. Lexmark has alleged that OutOfToner.com is in the business, among other things, of importing and/or selling remanufactured Toner Cartridges in which rights in the Lexmark Patent rights were not exhausted, compatible versions of the Toner Cartridges, and/or clones of the Toner Cartridges (collectively, “the Accused Cartridges”).

4. The Lexmark Patents are valid and enforceable against OutOfToner.com.

5. The following table identifies the patent claims of the Lexmark Patents that are satisfied literally by the Toner Cartridges and the Accused Cartridges:

Patent	Toner Cartridges / Accused Cartridges					
	E120	E23X/E24X/ E33X/E34X	E25X/ E35X/E45X	T52X/T61X/ T62X/T63X/T64X	E320/22	E220 and E321/23
5,337,032				1,5,6		
5,634,169				1-3,32-34, 36, 42	32,36,42	32,36,42
5,758,231		1-16	1-16		1-16	1-16
5,758,233				1-4		
5,768,661				1,2,3,6		
5,802,432				1-3, 7-9		
5,875,378				1-3,12-14,24		
5,995,772				1-3,5,7-9, 12,14-18,20,21	14,15,22, 32-34	14,15,22, 32-34
6,009,291	1-2	1-2	1-2	1-2		

Patent	Toner Cartridges / Accused Cartridges					
	E120	E23X/E24X/ E33X/E34X	E25X/ E35X/E45X	T52X/T61X/ T62X/T63X/T64X	E320/22	E220 and E321/23
6,078,771	1,5,6,10, 12,13,15	1,5,6,10, 12,13,15	1,5,6,10, 12,13,15	1,2,5,6,10, 12,13,15		
6,397,015				1-4,7-12, 14-19,22-24	1,2,4, 9,17,19	1,2,4, 9,17,19
6,459,876				1-28		
6,487,383	1,2,6, 10,15,19	1,2,6, 10,15,19	1,2,6, 10,15,19	1,2,6,10, 11,15,19	19	19
6,496,662		1,3,5,7	1,3,5,7			
6,678,489		5-6	5-6			
6,816,692	1-13	1-13	1-13			
6,871,031		1-6,8-12	1-6,8-12			
6,879,792		1-11	1-11			
7,139,510		1-10	1-10			
7,233,760	11,12,14	11,12,14	11,12,14			
7,305,204		1-20	1-8,10-13			

6. The importation, use, remanufacture, manufacture, offer to sell or sale by anyone other than Lexmark of any Toner Cartridge that was originally sold outside the United States constitutes an infringement the above-identified claims in the Lexmark Patents.

7. The importation, use, remanufacture, manufacture, offer to sell or sale by anyone other than Lexmark of any Toner Cartridge in the United States under which Lexmark's Patent rights were not exhausted constitutes an infringement the above-identified claims in the Lexmark Patents.

8. Except for any cartridge in which Lexmark's Patent rights have been exhausted, this Court permanently enjoins OutOfToner.com, as the party is defined, as well as those persons or companies in active concert or participation with OutOfToner.com who receive actual notice of the order by personal service or otherwise from making, using, selling, offering for sale or importing into the United States Accused

Cartridges that infringe any of the above-identified patent claims or are not colorably different from the Accused Cartridges.

9. Nothing herein limits or shall be construed to limit in any way OutOfToner.com's activities with respect to toner cartridges in which Lexmark's patent rights have been exhausted. Further, nothing herein limits or shall be construed to limit in any way OutOfToner.com's activities with respect to any Lexmark Patents that have expired, lapsed, are no longer enforceable, or have found to be invalid by a court of competent jurisdiction.

10. OutOfToner.com represents and warrants that the only Lexmark cartridges (including private label versions thereof) that OutOfToner.com imported originated from Greentec International, Inc. in Canada.

11. OutOfToner.com consents to personal jurisdiction by this Court, consents to venue in this District, and waives services of process for this action.

12. OutOfToner.com agrees to pay Lexmark a monthly, settlement amount on the terms to which the parties confidentially agreed. If OutOfToner.com defaults on any of its monthly settlement payments, the remaining principal sum then unpaid shall become immediately due and payable and Lexmark may seek recourse from this Court.

13. This Court retains jurisdiction over Lexmark and OutOfToner.com to the extent necessary to enforce the terms of this Stipulated Permanent Injunction, Consent Judgment, and Dismissal With Prejudice and the agreement between the parties.

14. This Stipulated Permanent Injunction, Consent Judgment, and Dismissal With Prejudice shall be binding upon and shall inure to the benefit of Lexmark and

OutOfToner.com as well as each of its respective subsidiaries, corporate parents, affiliates, and/or successors and assigns.


15. All claims between Lexmark and OutOfToner.com are hereby dismissed with prejudice, with each party to bear its own costs and attorneys' fees.

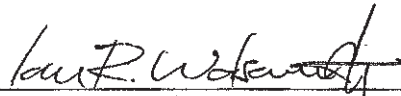
Dated: 9/12/12

By: s/ Michael R. Barrett
United States District Court Judge

HAVING BEEN SEEN AND AGREED TO ON AUGUST ¹²20, 2012:

By:


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